

10. S.73 APPLICATION – FOR THE REMOVAL OR ALTERATION TO CONDITION 4 (HOLIDAY OCCUPANCY CONDITION) FROM PLANNING CONSENT NP/SM/0106/0032, OLD DAINS MILL, UPPER HULME (NP/SM/1017/1042, P.2315, 401278/361117 06/10/2017/TS)

APPLICANT: Mr R Ball

Site and Surroundings

Dains Mill lies is located in open countryside to the north of the ford at Upper Hulme and is a two storey stone building that was formerly a mill and is part way through refurbishment. There is a three-storey building formerly used as a store house adjacent to the mill building and an access track runs from Upper Hulme through these two buildings and on up a steep bank to a second private access track at a much higher level.

The track from Upper Hulme passes through a series of properties, which all share the same access. The two nearest neighbouring properties to the mill are Mill House, which is approximately 25m to the south west, and Mill Cottage 32m to the south. There is also a public Right of Way that runs in a northerly direction approximately 70m to the west of the mill building and the site lies within the designated Upper Hulme Conservation Area.

Proposal

This application has been submitted under section 73 of the Town and Country Planning Act 1990, as amended.

This application seeks the removal of planning condition 4 imposed on Planning Decision NP/SM/0106/0032 which restricts the occupancy of the application building to short let holiday residential use, and prevents the holiday let from being occupied by any one person for a period exceeding 28 days in any calendar year.

The effect of granting planning permission for the current application would be to allow the use of the mill building as a permanent open market house to meet general demand. However, this would not prevent the premises continuing to be used as a holiday let once the current refurbishment has been completed.

An application to remove the condition was refused by the Authority in September 2016. The current application contains additional financial and heritage information, which is referred to and discussed in the Assessment section below.

RECOMMENDATION:

That the application be REFUSED for the following reasons:

- 1. The proposal fails to meet the requirements of Core Strategy Policy HC1(C) and national planning policies because the removal of the planning condition is not required in order to achieve conservation of the mill building and adjacent store house, and the proposals would not otherwise achieve any significant enhancements to the character and appearance of the building or its landscape setting.**

Key Issues

- Whether the removal of the holiday occupancy is required in order to achieve the conservation and / or enhancement of a building of vernacular merit in accordance with Core Strategy policy HC1(C)I and the provisions of paragraph 55 of the Framework.

History

2004 Restoration of derelict water mill - Granted subject to conditions (NP/SM/1203/0923)

2006 Change of use of restored water mill to holiday accommodation - Granted subject to conditions (NP/SM/0106/0032)

Condition 4, which is the subject of the current application and attached to this permission says: *“This permission relates solely to the use of the main mill building hereby approved for short-let holiday residential use; the property shall not be occupied as a permanent dwelling and shall not be occupied by any one person for a period exceeding 28 days in any calendar year. The owner shall maintain a register of occupants for each calendar year which shall be made available for inspection by the National Park Authority on request.”*

The reason for the above condition was stated as *“Permission has been granted solely for the holiday use and the National Park Authority wishes to retain control over the use of the property which is unsuitable for full residential use.”*

2016 Section 73 application to remove condition 4 was refused for the following reason:

“The proposal fails to meet the requirements of Core Strategy Policy HC1(C) and national planning policies because the removal of the planning condition is not required in order to achieve conservation of the mill building and adjacent store house, and the proposals would not otherwise achieve any significant enhancements to the character and appearance of the building or its landscape setting.”

Consultations

County Council (Highway Authority) – No objections

District Council - No response received to date.

Heathylee Parish Council – Heathylee Parish Council supports this application.

Authority’s Senior Archaeologist – Objects to the application.

Representations

No letters of representation have been received.

Main Policies

In this case, the effect of removing the holiday occupancy restriction attached to the building would be to create a new open market house outside a named settlement to meet general demand. Therefore, the most relevant policy in the determination of the current application is policy HC1 of the Core Strategy.

Policy HC1 says provision will not be made for housing solely to meet open market demand, and housing land will not be allocated in the development plan. Exceptionally, new housing can be accepted where it is (A) for affordable housing to meet local need or for assisted accommodation; (B) for key workers or (C) in accordance with core policy GSP2, it is required in order to achieve conservation and/or enhancement of valued vernacular or listed buildings.

The current proposals fall to be considered under the criteria of HC1(C) because the thrust of the submitted application is that the removal of the holiday occupancy restriction is required in order to complete the restoration and therefore the conservation and enhancement of a building that has both architectural and historic interest albeit the mill building is not listed.

There is no indication within the submitted application that the new house is otherwise intended for a key worker within the criteria of HC1(B), and there are no proposals to create affordable housing to meet local need or accommodation that would be prioritised by HC1(A).

The provisions of HC1(C) are supported by policies DS1 and GSP2 of the Core Strategy and policy LH1 of the Local Plan.

DS1 sets out very clearly new residential development should normally be directed to existing settlements within the National Park. By virtue of the distance between Parwich Lees and the main built up area of Parwich, the application site cannot be said to be within the village and therefore lies in open countryside.

Local Plan policy LH1 says exceptionally, residential development will be permitted either as a newly built dwelling in or on the edge of settlements or, as the conversion of an existing building of traditional design and materials in the countryside provided that it would be affordable housing to meet local need.

Policy GSP2 of the Core Strategy says opportunities will be taken to enhance the National Park will be taken and, in the supporting text to HC1, it is recognised that new housing may be the best way to achieve conservation and enhancement of a valued building. Hence, the provisions of HC1(C), which acknowledge that sometimes this requires the impetus provided by open market values.

However, the supporting text to HC1 also reiterates that unless open-market values are demonstrably required for conservation and enhancement purposes, all other schemes of this type that provide new housing should be controlled by agreements to keep them affordable and available for local needs in-perpetuity.

National Planning Policy Framework (NPPF)

It is considered the provisions of HC1(C) and supporting policies in the Development Plan are consistent with national policies in respects of new housing with the National Park. Firstly, because paragraph 54 of the Framework states that in rural areas, local planning authorities should be responsive to local circumstances and plan housing development to reflect local needs, particularly for affordable housing, including through rural exception sites where appropriate.

Paragraph 55 of the Framework goes on to say local planning authorities should avoid new isolated homes in the countryside unless there are special circumstances such as:

- the essential need for a rural worker to live permanently at or near their place of work in the countryside; or
- where such development would represent the optimal viable use of a heritage asset or would be appropriate enabling development to secure the future of heritage assets; or
- where the development would re-use redundant or disused buildings and lead to an enhancement to the immediate setting; or
- the exceptional quality or innovative nature of the design of the dwelling

In these respects, whilst prioritising affordable housing to meet local need on rural exception sites, policy HC1 clearly provides the opportunity for new residential development that would secure the optimal viable use of a heritage asset, or represent enabling development, or allow for the re-use of a disused building even where the application site may be outside of a recognised settlement in full accordance with the provisions of paragraphs 54 and 55 of the Framework.

Wider Policy Context

Relevant Core Strategy policies include: GSP1, GSP3, HC1, L1 and L3.

Relevant Local Plan policies include: LC4 and LC6.

GSP1 requires all new development in the National Park to respect and reflect the conservation purpose of the National Park's statutory designation and promotes sustainable development. L1 promotes development that would conserve and enhance the landscape character of the National Park.

Policies L3 and LC5 set out specific criteria applicable to proposals that would affect the special qualities of the National Park's designated Conservation Areas stating that, other than in exceptional circumstances, all development should conserve, and where possible enhance the significance of designated heritage assets. Policies LC4 and GSP3 set out further criteria to assess the acceptability of all new development in the National Park

The policies are also consistent with national policies in the Framework, which taken as a whole, encourage sustainable development proposals that would be of a high standard of design and sensitive to the locally distinctive character of the National Park and its cultural heritage

Assessment

In this case, a significant amount of work has been undertaken to restore the mill building and adjacent store house following the grant of planning permission for its restoration in 2004. Prior to these works, the mill building was in a derelict state and a significant amount of capital investment has been made to bring both the mill building and the adjacent store house back from the point of falling down and being lost forever. Information provides sets out that around £366,000 has been spent on the building to date. £315,000 of this was provided in DEFRA grants. The remainder was funded by the owners. The shells of both buildings have now been fully restored and a water wheel has been reinstated within the former mill building.

Therefore, it is mainly internal works that are required to fully implement the 2006 permission for the change of use of the buildings to holiday accommodation and bring the buildings back into use. However, costings provided by the applicant (detailed later in this report) suggest a significant amount of additional money will need to be spent to be able to complete the building works. Consequently, works have stalled on site not least because the projected revenue from the completed holiday let does not provide a sufficient return on investment to encourage further investment in the buildings now that they are secure and watertight. In summary, removing the holiday occupancy restriction and the impetus of open market values that would arise from the property becoming a house to meet general demand would 'unlock' the development and bring the buildings back into use.

In these respects, there is an argument that the holiday occupancy condition no longer fulfils a proper planning purpose because retaining this restriction means that the mill building and store house could stand empty for some considerable time whereas it could be brought back into use to provide housing much sooner if the condition was removed. However, there is no reason to consider that holiday accommodation would amount to a non-conforming use in this location and there are no changes in circumstances since the 2006 approval that would mean that the change of use of the building to a holiday let would no longer be acceptable in planning terms. Therefore,

there are no immediate reasons to consider that the holiday occupancy condition should be removed in the interests of the proper planning of the local area.

The Authority's policies also continue to support the re-use of buildings for holiday accommodation because this would support both purposes of the National Park statutory designation by conserving buildings and promoting enjoyment and understanding of the National Park's special qualities. In some cases, holiday accommodation can also provide a supplementary income for local residents including farmers. In a range of appeal decisions, Planning Inspectors have agreed with the Authority that removing a holiday occupancy condition to provide open market housing does not in itself accord with the Authority's housing policies, the National Park's purposes or the Authority's duty to foster the social and economic welfare of local communities. This has been the case even where there has been some doubt about the viability of holiday accommodation.

One of the key reasons that removal of holiday occupation conditions to allow permanent open market housing has not been supported at appeal is because HC1(C)I is consistent with paragraph 55 of the NPPF insofar as both policies only support housing in open countryside as a means to achieve significant enhancements to particular sites and their settings. This means the removal of a holiday occupancy condition to create an open market housing to meet general demand would not accord with policy HC1(C)I or present the exceptional circumstances required by national planning policies if an approval of a new house in open countryside would not achieve enhancements to the site or its setting. In contrast, the creation of affordable housing or a farm worker's dwelling are accepted in policy terms because both would meet a genuine or essential need for new housing outside of a designated settlement in a manner that is consistent with the priorities set out in the Authority's Development Plan and the Framework.

In this case, removing the holiday occupancy condition would not in itself secure any enhancement to the site and surroundings above what has already been achieved because the external shells of both buildings have been fully restored. Affordable housing is not being proposed albeit it is likely that the new house would not be affordable unless the premises were to be subdivided. Equally, a key worker's dwelling is not being proposed but again it is not clear that the property would be affordable to a person who needed to live close to their work who would be employed in the local area. Therefore, the removal of the condition would not provide any wider public benefits other than the impetus of open market values might bring the buildings back in to use in a much shorter timeframe and there is no overriding justification to allow an exceptional approval for the removal of the holiday occupancy condition on conservation and enhancement grounds.

Since the previously refused application to remove the holiday occupancy restriction, the applicant has provided additional information relating to the viability of completing the development for holiday use and which also considers the possible alternative use of the building to provide affordable local need dwellings.

The financial information is summarised as follows:

Costs (all additional to the money that has already been spent on the conversion to date)

- Completing the conversion for holiday accommodation will cost £286,695.
- Completing the conversion to an open market dwelling with on-site energy generation will cost £218,950.
- Completing the conversion to an open market dwelling with connection to mains will cost £265,850.
- Conversion of the building to two dwellings would cost £371,600.
- A personal loan of £130,000 has already been taken out to part-finance the works that have been carried out to date.

Returns

- Income from the holiday let would realise an annual profit of £8,836 in 2020
- The annual profit does not take into account the large capital loan that would be needed to finance the conversion so would result in an annually increasing overdraft.
- An open market dwelling is forecast to be valued at £400,000
- Sale of an open market dwelling with on-site energy generation would realise a net profit of £161,954 (not including the money spent on the project to date).
- Sale of an open market dwelling with mains connections would achieve a net profit of £129,940 (not including the money spent on the project to date).
- The conversion of the property to two affordable dwellings for local needs would achieve sales of £300,000 and would result in a loss of £93,016.
- The conversion of the property to one open market dwelling and one affordable dwelling for local needs would achieve sales of £375,000 and would result in a loss of £18,766

In addition to the above information, the submitted planning statement states in respect of financing completion of the project for holiday let use that *“Discussions with two mainstream lenders have furthermore confirmed that no lender would finance the sum required, as the business is not forecast to make sufficient profits to fund capital and interest repayments.”*

Based on the information submitted by the applicant, it is therefore acknowledged that an alternative conversion including either one or two affordable local needs dwellings is not viable and therefore does not represent a realistic alternative use to the previously approved holiday let use. It is also acknowledged that, based on the submitted figures, the holiday let returns are unlikely to incentivise the current owners to complete the project for holiday let use. It is therefore further acknowledged that there is a possibility that if the application to remove the holiday occupancy condition is refused that the building may remain empty.

The submitted planning statement acknowledges that the previous application was refused as the Authority considered that there would be no conservation or enhancement benefit as the external shells of the mill building and adjacent drying house have already been fully restored. However the statement goes on to assert that *“this stance is somewhat short sighted, and is contrary to the principles of sustainable development.”* This is because the applicant maintains that the removal of the condition is required to bring the building into use and failure to bring the building into use will result in harm.

A Heritage Statement has been submitted which outlines the significance of the mill buildings and it is agreed that the site is one of historic, archaeological and architectural interest. The site is considered to be a non-designated heritage asset. Buildings on the site include the remains of a water-powered corn mill and drying kiln. There are also water management features associated with this and, possibly earlier, mills lying immediately to the north of the existing buildings.

The Heritage Statement makes an assessment of the impact of not allowing the mill complex to become an open market residential dwelling, i.e. if the building remains unused. This concludes that:

*“Whilst the mill buildings are currently in good repair, the greatest risk to the restored mill would be for it to be left vacant and unmaintained. This would inevitably result in the carefully restored buildings once again falling into disrepair and eventual dereliction. This would represent an impact of **substantial harm** to the significance of an important heritage asset.”*

The Planning Statement goes on to state that: *“The building’s long-term survival is dependent upon an assured level of future permanent maintenance and the removal of the holiday occupancy restriction is the only means of achieving this.”*

It is fully acknowledged that it would be desirable to bring the heritage asset into an appropriate use that accords with the Authority's planning policies, which the approved holiday let use would do. It is also acknowledged that, in light of the financial information that has been submitted, there must be some doubt about the likelihood of the holiday let use being implemented by the current owners. However, it is considered that the view put forward in the supporting information that leaving the building vacant would result in substantial harm is not correct.

The Authority's Senior Archaeologist has noted that substantial harm is a very high test, usually arising from significant demolition of buildings, and one that would not be reached from leaving the building vacant. The gradual decline of the buildings would result in some harm to significance, but not substantial harm. Any decline from vacancy is likely to be slow and gradual. Due to the earlier work, the buildings are currently secure and the conservation of the buildings has been realised. It is considered likely that the buildings will remain in their current condition with minimal maintenance for decades to come.

The NPPF sets out that Local planning authorities should avoid new isolated homes in the countryside unless there are special circumstances, including where such development would represent the optimal viable use of a heritage asset or would be appropriate enabling development to secure the future of heritage assets. The supporting information states that the proposed removal of the holiday occupancy condition will derive an end use which represents the optimal viable use of this existing heritage asset, and therefore the development will be consistent with the provisions of paragraph 55 of the NPPF. However, it is important to clarify that Optimum Viable Use is defined by Historic England as follows: *"If there are a range of alternative ways in which an asset could viably be used, the optimum use is the one that causes the least harm to the significance of the asset, not just through necessary initial changes but also as a result of subsequent wear and tear likely future changes."*

The optimum viable use therefore is not the one which is most profitable. Case law has confirmed this, notably *R Gibson v Waverley Borough Council (2012)* which establishes that *"the optimum viable use is that which has the least harmful impact on the significance of the asset, a use that may not be the most profitable"*.

No options appraisal has been submitted with the application so it is not possible to conclude with any certainty that an open market dwelling is the optimum viable use of the heritage asset.

It is therefore considered overall that there is a fine balance between the desire to see the building brought into use and also protection of the Authority's housing policies. It is considered that the holiday use restriction should only be removed if doing so would deliver tangible conservation or enhancement benefits. The applicant's assertion that failure to approve the removal of the condition would result in substantial harm to the building, and as such there is a conservation benefit by avoiding substantial harm, is not accepted. This is because any decline through the building remaining empty is likely to be very gradual, given the conservation works that have already been done. It is also considered that, whilst the submitted information has demonstrated that the financial returns are unlikely to incentivise the current owner to complete the project for holiday let use or an affordable housing scheme, the application has not demonstrated that other options have been fully explored and discounted or that the property has been marketed for a different developer to complete the works required to implement the holiday let use. It is ultimately considered that removal of the condition is not required to achieve conservation or enhancement of the non-designated heritage asset.

In these respects, in the determination of an application to remove a condition, a local planning authority should apply relevant policies in the Development Plan and the Framework, and in this case: the proposals conflict with policy HC1(C)I and the provisions of paragraph 55 of the Framework which place strict controls on residential development in open countryside in the National Park. It is acknowledged that the removal of the condition would have some benefits for

the applicant and the local area by bringing the buildings back into use as housing. However, these benefits do not outweigh the identified conflict with national and local housing policies because there are no exceptional circumstances that warrant releasing the holiday occupancy condition that continues to fulfil a useful planning purpose consistent with planning policy and the National Park's purposes. Consequently, the current application should be refused unless any other relevant planning considerations indicate otherwise.

Other Relevant Considerations

The Authority's Senior Archaeologist has raised concerns that open market residential use would represent a more intensive use of the site than the approved holiday use and it would harm the setting and significance of the important non-designated heritage asset. However, it is considered that the mill building and adjacent store house could be occupied on a permanent basis without harming the character and appearance of the building or their setting especially taking into account there would be no changes to the buildings compared to what has been approved in 2004 and 2006. Adequate parking and provision and outdoor amenity space could be achieved without harming the character of the surrounding landscape also noting that the application site is hardly visible in the wider landscape. It is therefore considered that a refusal on grounds of harm to the heritage asset could not be substantiated. It is also considered that the permanent occupancy of the property would not harm the living conditions of the occupants of the nearest neighbouring properties not least because of the intervening distances between them.

Access to the buildings from Upper Hulme is through a range of other properties but there is no reason to consider the proposals to remove the holiday occupancy condition would unacceptably intensify the use of the shared access track or give rise to highway safety concerns. It remains the case that the property already has a suitable access from Upper Hulme and no objections have been received to the continued use of this access.

Conclusions

It is therefore concluded that removing the condition and the creation of a house to meet general demand in open countryside in a National Park is unacceptable and no material considerations exist which outweighs this. In this case, the proposal fails to meet the requirements of Core Strategy Policy HC1(C) and national planning policies because the removal of the planning condition is not required in order to achieve conservation of the mill building and adjacent store house, and the proposals would not otherwise achieve any significant enhancements to the character and appearance of the buildings or its landscape setting.

Accordingly, the current application is recommended for refusal.

Human Rights

Any human rights issues have been considered and addressed in the preparation of this report.

List of Background Papers (not previously published)

Nil